

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JEFF VERLY**  
Claimant

**MASTERBRAND CABINETS INC**  
Employer

**APPEAL 21A-UI-11992-JD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 4/19/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.5 (2) a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On April 22, 2021, the claimant, Jeff Verly, filed an appeal from the April 19, 2021, (reference 01) unemployment insurance decision that denied benefits based on an IWD representative's determination that the claimant was discharged for disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2021. Claimant Jeff Verly, participated personally. Employer notified Iowa Workforce Development that they would not be participating in this hearing via fax from employer representative, ADP. Official notice was taken of the administrative record.

**ISSUE:**

Was the claimant discharged from employment for disqualifying job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 26, 2001. Claimant last worked as a full-time sander. Claimant was separated from employment on March 3, 2021, when he was discharged for not ensuring a new safety protocol was being followed and documented. The claimant was never advised as to the importance of this particular safety protocol or trained on its implementation. The claimant operated a commercial sanding machine that he tested for proper safety protocols twice daily. The safety protocol he was discharged for not following was never explained to him nor was he ever given a directive to complete this protocol. The claimant discovered how to institute and report this particular protocol the day he was terminated. The claimant had no history of disciplinary action during his 20 years of employment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(4) provides:

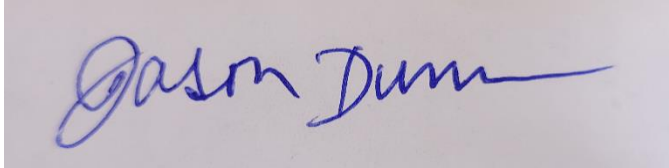
(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

The employer did not register for or participate in this hearing and did not meet its burden in proving disqualifying misconduct. The claimant's testimony was moving and credible. His termination for not following a safety protocol he was never directed to implement is not misconduct and benefits are allowed.

**DECISION:**

The April 19, 2021, (reference 01) unemployment insurance decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Jason Dunn  
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July 30, 2021  
Decision Dated and Mailed

jd/lj